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PATENT APPLICATION

ATTORNEY DOCKET NO. 200310816-1

**IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventor(s): Debargha Mukherjee et al.

Confirmation No.: 1159

Application No.: 10/724,284

Examiner: Kevin T. Bates

Filing Date: Nov. 26, 2003

Group Art Unit: 2456

Title: METHOD AND APPARATUS FOR APPLYING RECEIVING ATTRIBUTES USING CONSTRAINTS

Mail Stop Appeal Brief - Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF REPLY BRIEF

Transmitted herewith is the Reply Brief with respect to the Examiner's Answer mailed on Oct. 21, 2009 .

This Reply Brief is being filed pursuant to 37 CFR 1.193(b) within two months of the date of the Examiner's Answer.

(Note: Extensions of time are not allowed under 37 CFR 1.136(a))

(Note: Failure to file a Reply Brief will result in dismissal of the Appeal as to the claims made subject to an expressly stated new ground rejection.)

No fee is required for filing of this Reply Brief.

If any fees are required please charge Deposit Account 08-2025.

Respectfully submitted,

Debargha Mukherjee et al.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant:	Debargha Mukherjee et al.	Examiner:	Kevin T. Bates
Serial No.:	10/724,284	Group Art Unit:	2456
Filed:	Nov. 26, 2003	Docket No.:	200310816-1
Title:	METHOD AND APPARATUS FOR APPLYING RECEIVING ATTRIBUTES USING CONSTRAINTS		

REPLY BRIEF TO EXAMINER'S ANSWER

Mail Stop Appeal Brief – Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is presented in response to the Examiner's Answer mailed October 21, 2009, and in support of the Notice of Appeal filed June 3, 2009 and the Appeal Brief filed September 3, 2009, appealing the rejection of claims 11-19, 33, 34, and 37-44 of the above-identified application as set forth in the Final Office Action mailed April 3, 2009.

At any time during the pendency of this application, please charge any fees required or credit any overpayment due to Deposit Account No. 08-2025 pursuant to 37 C.F.R. 1.25. Additionally, please charge any fees required to Deposit Account No. 08-2025 under 37 C.F.R. 1.16, 1.17, 1.19, 1.20 and 1.21.

Appellant respectfully requests reconsideration and reversal of the Examiner's rejection of pending claims 11-19, 33, 34, and 37-44.

Reply Brief to Examiner's Answer

Appellant: Debargha Mukherjee et al.

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ARGUMENT

I. The Applicable Law

The Applicable Law is provided in the Appeal Brief filed on September 3, 2009.

II. Rejection of Claims 11-19, 33, 34, and 37-44 under 35 U.S.C. §103(a) as being unpatentable over Kalra in view of Mukherjee

A. Rejection of Claims 11-18, 33, 34, 37, and 44 under 35 U.S.C. §103(a) as being unpatentable over Kalra in view of Mukherjee

1. Rejection of Claim 11 under 35 U.S.C. §103(a) as being unpatentable over Kalra in view of Mukherjee

In the Examiner's Answer, the Examiner suggests that the following "concepts" of claim 11 are not are disclosed in the manner provided by the first paragraph of 35 U.S.C. §112 by Mukherjee-'925:

1. "defining different adaptation points";
2. "ascertaining a set of one or more candidate ones of the adaptation points"; and
3. "selecting an adaptation point from the set of candidate adaptation points without regard to the scalable encoded media data".

Examiner's Answer, p. 12. Appellant respectfully maintains that the above recitations of claim 11 are disclosed in the manner provided by the first paragraph of 35 U.S.C. §112 by Mukherjee-'925 as follows.

Although Mukherjee-'925 does not use the term "adaptation points", the Present Application defines the term "adaptation points" in the context of the teachings of Mukherjee-'925 such that the term "adaptation points" is fully supported by the teachings of Mukherjee-'925. Compare Present Application, p. 10, lines 20-23 and p. 16, line 23 to p. 17, line 8 with Mukherjee-'925, col. 8, lines 30-54. See also Present Application, p. 32, lines 21-30, p. 34, line 24 to p. 37, line 22; p. 38, line 21 to p. 39, line 5; p. 42, lines 18-24; and p. 55, lines 1-20.

The recitation of "defining different adaptation points" occurs in claim 11 as "receiving a scalable encoded bitstream comprising scalable encoded media data and values of non-media-type-specific scalability attribute variables defining different adaptation points of the

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scalable encoded media data” In addition to the citations to Mukherjee-‘925 provided in the Appeal Brief, Mukherjee-‘925 teaches the receipt and use of a scalable encoded bitstream in at least Fig. 1 through Fig. 4B along with the accompany description. Appellant respectfully submits that the structure and format of the scalable encoded bitstreams described in Mukherjee-‘925 supports the use of the recitation of “defining different adaptation points” in the context of the above feature of claim 1.

Appellant respectfully notes that claim 11 recites “ascertaining a set of one or more candidate ones of the adaptation points” (emphasis added). Thus, the literal reading of claim 11 only requires that the set of candidate ones include a single adaptation point. The further recitation of “selecting an adaptation point from the set of candidate adaptation points without regard to the scalable encoded media data” also only requires that the set of candidate ones include a single adaptation point.

The Examiner suggests that Mukherjee-‘925 does not disclose “a set of discreet adaptation points being chose as possibilities of the adaptation point of the scalable bitstream, and selecting one adaptation point out of the set of possibilities.” Examiner’s Answer, p. 13 (emphasis added to note plural). The Examiner’s rationale does not account for ascertaining and selecting an adaptation point from a set of candidate adaptation points with only a single adaptation point as recited in claim 11. Mukherjee-‘925 plainly supports the use of a single adaptation point as described above. Accordingly, Appellant respectfully submits that Mukherjee-‘925 also supports these features of claim 11.

Based on the above, Mukherjee does not qualify as prior art for claim 11. As previously noted, the Examiner conceded that Kalra does not teach or suggest all of the features of claim 11. See Final Office Action, p. 3. Accordingly, Appellant respectfully requests that the rejection of claim 11 under 35 U.S.C. §103(a) be reversed.

2-10. Rejection of Claims 12-18, 37, and 44 under 35 U.S.C. §103(a) as being unpatentable over Kalra in view of Mukherjee

Appellant respectfully submits that claims 12-18, 37, and 44 are disclosed in the manner provided by the first paragraph of 35 U.S.C. §112 by Mukherjee-‘925 as described in the Appeal Brief. Accordingly, Appellant respectfully requests that the rejection of claims 12-18, 37, and 44 under 35 U.S.C. §103(a) be reversed.

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11. Rejection of Claim 33 under 35 U.S.C. §103(a) as being unpatentable over Kalra in view of Mukherjee

Claim 33 is disclosed in the manner provided by the first paragraph of 35 U.S.C. §112 by Mukherjee-‘925 as described in the Appeal Brief and in Section II(A)(1) above. Accordingly, Appellant respectfully requests that the rejection of claim 33 under 35 U.S.C. §103(a) be reversed.

12. Rejection of Claim 34 under 35 U.S.C. §103(a) as being unpatentable over Kalra in view of Mukherjee

Claim 34 is disclosed in the manner provided by the first paragraph of 35 U.S.C. §112 by Mukherjee-‘925 as described in the Appeal Brief and in Section II(A)(1) above. Accordingly, Appellant respectfully requests that the rejection of claim 34 under 35 U.S.C. §103(a) be reversed.

B. Rejection of Claims 19 and 38-43 under 35 U.S.C. §103(a) as being unpatentable over Kalra in view of Mukherjee

The Examiner has failed to set forth a *prima facie* case of obviousness under 35 U.S.C. §103 for claims 19 and 38-43.

1. Rejection of Claim 19 under 35 U.S.C. §103(a) as being unpatentable over Kalra in view of Mukherjee

In the Examiner’s Answer, the Examiner now alleges that Mukherjee-Proposals, rather than Kalra, teaches or suggest the above feature of claim 19 and reference the rationale for claim 43 to support combining the teachings of Mukherjee-Proposals with Kalra. Examiner’s Answer, p. 14.

With reference to claim 43, the Examiner states that “[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to allow the constraints to be programmed by the media stream creator to allow a wide variety of stream formats to be processed by the transcoders.” Examiner’s Answer, p. 10. Appellant respectfully submits

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that this rationale fails to justify the combination of Kalra and Mukherjee-Proposals. The Examiner fails to explain how the concept of allowing constraints to be programmed by a media stream creator relates, in any way, to “wherein the determining comprises determining at least one of the adaptation measures based at least in part on an evaluation of a stack function comprising operators, and variables corresponding to ones of the scalability attributes” as recited in claim 19.

Because the Examiner has not set forth a sufficient rationale for combining Mukherjee-Proposals with Kalra, Appellant respectfully submits that the Examiner has not set forth a *prima facie* case of obviousness under 35 U.S.C. §103 for claim 19. Accordingly, Appellant respectfully requests that the rejection of claim 19 under 35 U.S.C. §103(a) be reversed.

2. Rejection of Claims 38-43 under 35 U.S.C. §103(a) as being unpatentable over Kalra in view of Mukherjee

In the Examiner’s Answer, the Examiner appears to have supplemented the previous, unsupported rationale for combining Mukherjee-Proposals with Kalra with a mere conclusionary statement that “[the teachings of Mukherjee-Proposals] would replace the defined algorithms described in Kalra which would allow the creators of the streams to defined their own scaling algorithms to be implemented to encode the stream.” Examiner’s Answer, p. 15. Appellant respectfully submits that this added conclusionary statement amounts to unsupported speculation of a possible benefit of the combination rather than a reasoned statement as to one of ordinary skill in the art at the time the invention was made would be motivated to combine Mukherjee-Proposals with Kalra in the first place.

Appellant respectfully submits that the Examiner still has not set forth a *prima facie* case of obviousness under 35 U.S.C. §103 for claim 38 for the above reasons. Accordingly, Appellant respectfully requests that the rejection of claim 19 under 35 U.S.C. §103(a) be reversed.

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CONCLUSION

For the above reasons, Appellant respectfully submits that claims 11-19, 33, 34, and 37-44 of the pending Application have not been established to be obvious in view of the cited references. Accordingly, Appellant respectfully requests that the Examiner be reversed.

Any inquiry regarding this Reply Brief should be directed to either Denise Saffold at Telephone No. (650) 236-4868 or Christopher P. Kosh at Telephone No. (512) 241-2403, Facsimile No. (512) 241-2409. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,

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